

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

NANCY PLUNK,)	
)	
Plaintiff,)	Case No.: 1:23-CV-01058-JDB-jay
)	
v.)	DISTRICT JUDGE BREEN
)	MAGISTRATE JUDGE YORK
SHELTER MUTUAL INSURANCE)	
COMPANY, JOHN PRICE,)	JURY DEMAND
VCE, INC., and JASON PIRTLE,)	
)	
Defendants.)	

DEFENDANT VCE, INC.’S MOTION FOR AWARD OF ATTORNEYS’ FEES

Defendant VCE, Inc. (“VCE”), by and through counsel, respectfully moves the Court for entry of an Order awarding it the attorneys’ fees, expenses, and costs it incurred in this cause in the amount of **\$23,102.50** for the period of April 8, 2023, through the date of this Motion. In support of this Motion, VCE states as follows:

1. Plaintiff filed her Complaint on March 7, 2023, in the Circuit Court for Madison County, Tennessee.
2. VCE’s counsel filed their Notice of Appearance on April 17, 2023. (Dkt. No. 11).
3. On April 13, 2023, this case was removed to this Court. (Dkt. No. 1).
4. On May 19, 2023, VCE filed its Motion to Dismiss Plaintiff’s Complaint pursuant to Fed R. Civ. P. 12(b)(6), along with its supporting Memorandum of Law. (Dkt. Nos. 23 and 23-1).
5. This Court issued an Order granting VCE’s Motion to Dismiss on October 20, 2023. (Dkt. No. 34). In so doing, the Court held that Plaintiff had waived its claims for Appraisal

and Appointment of an Umpire, as well as its claim for Breach of Contract, and that Tenn. Code Ann. § 56-53-103(a)(1) is inapplicable to VCE. *Id.*

6. The Court further ordered Plaintiff and her counsel to show cause why counsel should not be sanctioned for omitting portions of Tenn. Code Ann. § 56-53-103 in the Complaint and Response to Defendant Price's Motion to Dismiss. The omitted portions would have shown that the statute is inapplicable to Defendants Price and VCE.

7. VCE has been forced to participate in this lawsuit, both in state and federal court, due to Plaintiff's baseless claim under Tenn. Code Ann. § 56-53-103 and fraudulent joinder. (Discussed in Dkt. No. 34 at p. 7).

8. Despite the American Rule, a federal court may, within its discretion and its equitable power, award attorneys' fees in exceptional circumstances. *Grinnell Bros., Inc. v. Touche Ross & Co.*, 655 F.2d 725, 726 (6th Cir. 1981). This includes circumstances, like this, where an adversary has "acted in bad faith or vexatiously," *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 n. 4 (1968).

9. In support of its application for an award of fees incurred since April 8, 2023, VCE submits: (1) a Memorandum of Law; (2) the Affidavit of its counsel of record, Thomas W. Shumate IV, which attached as **Exhibit A**; (2) the itemized statement for legal services and expenses rendered in this matter, which is attached to the Affidavit as **Exhibit A-1**; (3) the Affidavit of Nathan Pride, an attorney practicing in the Western District of Tennessee, which is attached as **Exhibit B**; (4) Counsel's Certificate of Consultation; and (5) a Proposed Order granting VCE's Motion.

10. VCE submits that its fees and expenses are reasonable and were necessary for execution of its counsel's work in this matter and when viewed in light of the criteria set forth in Rule 1.5(a) of the Tennessee Rules of Professional Conduct.

WHEREFORE, for the reasons set forth above and discussed in its Memorandum of Law, VCE respectfully moves this Court for an Order awarding attorneys' fees and expenses totaling **\$23,102.50**.

Respectfully submitted,



By: /s/ Thomas W. Shumate IV
Thomas W. Shumate IV (#019595)
5141 Virginia Way, Suite 320
Brentwood, TN 37207
615-229-7499 (office)
615-229-7498 (fax)
www.meridian.law
tom.shumate@meridian.law
Attorney for Defendant VCE, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Motion for Award of Attorneys' Fees** has been filed using the Court's CM/ECF system on November 10, 2023, which will automatically send a copy of the filing to:

Drayton Berkley (#022601)
The Berkley Law Firm
1255 Lynnfield Road, Ste 226
Memphis, TN 38119
Ph.: 901-322-8706
attorneyberkley@gmail.com
Attorney for Plaintiff

E. Jason Ferrell
Brewer, Krause, Brooks, Chastain &
Meisner, PLLC
545 Mainstream Drive, Suite 101
Nashville, TN 37228
Ph.: 615-256-8787, Ext. 116
jferrell@bkblaw.com
*Attorneys for Shelter Mutual Insurance
Company and John Price*

/s/ Thomas W. Shumate IV
Thomas W. Shumate IV